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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of:)	
)	
Brett B. BONNER et al.)	Group Art Unit: 2635
)	
Application No.: 09/836,350)	Examiner: Kimberly Y. Jenkins
)	
Filed: April 18, 2001)	
)	
For: SYSTEM AND METHOD FOR)	Confirmation No.: 8729
CONTROLLING ACCESS TO)	
DESIGNATED AREA)	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REPLY BRIEF UNDER 37 C.F.R. § 1.193

Pursuant to 37 C.F.R. § 1.193, Appellants submit this Reply Brief to the Board of Patent Appeals and Interferences in response to the Examiner's Answer mailed August 9, 2006.

I. Status of the Rejections and Appeal

In response to the Appeal Brief filed May 8, 2006, the Examiner withdrew the rejections of claims 21-25, indicating that these claims would be allowable, if rewritten into independent form. The Examiner expressed the opinion that these claims, therefore, are not presented for review on appeal, and Appellants agree. Appellants will make appropriate amendments to place at least these claims into condition for allowance, when the appeal is concluded.

The Examiner has continued to reject the other claims on appeal, based on the same references and type of rejections previously identified in Appellants' main brief. Appellants continue to disagree with the remaining rejections of record and respectfully submit that the Examiner has not met her burden. In that regard, the Examiner in her Answer agreed that the Summary of Claimed Subject Matter stated in Appellants' main brief was correct, as was Appellants' statement of the remaining grounds for rejection. The material issues and differences presented by this appeal, therefore, reduce to a few points that Appellants submit require that the rejections be reversed.

The first material dispute between the Examiner and Appellants is whether the primary reference Holcomb et al. contains each and every element and limitation of the claims alleged to be anticipated. Appellants submit that the Examiner has failed to establish anticipation and further submit that the lack of anticipation by the primary reference also renders the obviousness rejections improper. Moreover, Appellants submit that the Examiner's proposed combination of references to reject the remaining claims is based on impermissible hindsight and lacks any teaching or motivation that would lead to the claimed inventions under the controlling principles of 35 U.S.C. § 103. While Appellants will not represent their appeal brief, they will through this Reply identify what they believe are some of the more central issues left before the Board.

II. Section 102 Rejections

The Examiner continues to reject claims 1-3, 12, and 20 under 35 U.S.C. 102(b) as allegedly being anticipated by U.S. Patent No. 5,670,940 to Holcomb et al.

By means of example, Holcomb et al. does not disclose the claimed combination of claim 1 which includes: "a programmable unit to generate a first and second key for

each access to the designated area.” Appellants explained their position on this issue in the Appeal Brief, responding to the Examiner’s analysis and noting that under controlling precedent, the Examiner cannot carry her burden of proving anticipation unless she provides independent support for her allegations that the claimed elements is inherent or otherwise indirectly established by the content of Holcomb et al. In her Answer, however, the Examiner again has responded by simply stating that “algorithms will not operate unless there is input wherein the input is utilized by the key generating station,” in effect acknowledging that Holcomb et al. does not expressly disclose the claimed limitations. (Examiner’s Answer, p. 15). As understood by Appellants, the Examiner is urging that algorithms must have inputs and these inputs can then be characterized as the claimed first and second keys, along with the other claimed limitations. Appellants respectfully submit that the Examiner’s argument and rejection is inconsistent with the disclosed and claimed invention in their application. Moreover, the Examiner has failed to introduce any evidence that supports the proposition that algorithms must have inputs and these inputs must, or can, be equated to the keys of the claimed invention. Therefore, Holcomb et al. fails to teach at least the above-quoted elements of claim 1 and cannot anticipate independent claim 1.

As explained by Appellants in their main brief, Independent claim 20 recites similar limitations to those of claim 1. Holcomb et al. thus also fails to anticipate claim 20 for at least the reasons given above with respect to claim 1. Therefore, Appellants respectfully request the rejection of claims 1 and 20 under 35 U.S.C. § 102(b) be reversed and the claims allowed.

III. Section 103 Rejections

While the Examiner did withdraw several § 103 rejections, the Examiner continues to reject claims 4, 9, and 14 under 35 U.S.C. 103(a) as being unpatentable over Holcomb et al. in view of U.S. Patent No. 6,367,011 to Lee et al., claim 13 as being unpatentable over Holcomb et al. in view of U.S. Patent No. 6,484,260 to Scott et al., and claims 5-8, 10, 11, 15-19, and 26-28 as being unpatentable over Holcomb et al. in view of Lee et al., in further view of U.S. Patent No. 5,774,053 to Porter.

The Examiner's rejections are based on the principal reference Holcomb et al. which fails to meet elements and limitations in the "anticipated" claims, as explained in Appellants' main brief and this reply. In addition to these deficiencies, even the Examiner agrees that there are additional differences between Holcomb et al. and certain elements and limitations of the claimed inventions. The Examiner agrees that Holcomb et al. does not disclose the memory as being non-volatile (claim 4); does not disclose a proximity detector of claims 8 and 9; does not disclose the programmable unit to generate an encryption key of claim 14, does not disclose the security device as being a garage door opener (claim 13); does not disclose transceivers (claims 5-7); does not disclose the predetermined time limitation of claims 15-16; and does not disclose a clock to determine time and date of access that is to be stored within the memory. (Examiner's Answer, pp. 6-13). Yet, the Examiner rejects these claims by selecting references in hindsight and combining them without any suggestion or motivation in the art.

Appellants explained in detail why the combinations proposed by the Examiner are improper and do not render the claims obvious under 35 U.S.C. § 103. In the Response to Argument section of the Examiner's Answer the Examiner only responds

specifically to Appellants' argument regarding claim 8 and leaves Appellants' other arguments unanswered. Rather, for claims 4-7, 9-11, 13-14, and 17-19, the Examiner states that the arguments are not persuasive "for the same reasons given[en] with respect to [allegedly anticipated] claims 1-3, 12, and 20 as evidenced by Holcomb." The Examiner seems to agree that if these claims are not anticipated, then the Examiner's § 103 rejections fall. In any event, Appellants stand by their unanswered-specific arguments regarding these claims and submit that these claims, and claim 8, are patentable.

Claim 8 recites, "validation system further includes a proximity detector causing the communication device to initiate the wireless data communication with the programmable tag upon detecting an object outside the designated area." The cited portions of Lee et al., however, merely describe a card reader interface, which "may provide a contact interface, a close-coupled interface, a remote-coupled interface, or a variety of other interfaces. (Col. 5: ll. 20-23). Lee et al. is completely silent on any disclosure of any "detector," much less a "proximity detector," as recited in claim 8.

To overcome these deficiencies, the Examiner, with no evidentiary support, characterizes what "must be" and explains what she believes to be "well known" to one skilled in the art. The Examiner expressly failed to address Appellants' reference to the February 21, 2002 Memorandum from USPTO Deputy Commissioner for Patent Examination Policy, Stephen G. Kunin, regarding "Procedures for Relying on Facts Which are Not of Record as Common Knowledge or for Taking Official Notice." She ignores the Federal Circuit criticism of the "USPTO's reliance on 'basic knowledge' or 'common sense' to support an obviousness rejection, where there was no evidentiary

support in the record for such a finding.” Id. at 1. See also In re Lee, 61 USPQ2d 1430, 1432-1433 (Fed. Cir. 2002), quoting In re Zurko, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). As Appellants explained in their brief, the Examiner has not carried her burden of proving the obviousness of claim 8, or any of the other claims rejected under 35 U.S.C. §103(a).

III. Conclusion

For these reasons and the reasons given in Appellants’ Appeal Brief filed on May 8, 2006 and in this Reply, Appellants respectfully request the Board to reverse the final rejection of claims 1-20 and 26-28.

Respectfully submitted,

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